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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

BERTHEAUD, PETER JOHN

ART UNIT	PAPER NUMBER
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3746

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/22/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/765,517

Applicant(s)

BONNE, ULRICH

Examiner

Peter J. Bertheaud

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) 31-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 9-20, 22-30 and 36-54 is/are rejected.
- 7) ☒ Claim(s) 6-8 and 21 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Claims 31-35 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on January 16, 2007.

Claim Objections

2. Claim 13 is objected to because of the following informalities: In line 4, the phrase "non-shape-like conductor openings" should be changed to -- non-sharp-like conductor openings --. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 15 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. On page 17 of the Application, the exact limitations of the claims are stated. However, there is no further explanation of why the ratio R being greater than 1 but less than 10 would make the pump more efficient.

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5. Claims 17, and 18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In reference to claim 17, how would one skilled in the art be able to “select” a number of openings, stages, and applied voltage to achieve a “desired” result? There is no guidance given in the specification as to how this selection process is carried out. In reference to claim 18, how and why would one skilled in the art increase the number of openings by a factor? There is no guidance in the specification as to how this factoring takes place and by what amount the number of openings would increase to after factoring. Furthermore, there are no structural limitations in this apparatus claim therefore it receives little patentable weight.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 50-52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In Claim 50, the phrase “A means for ion pumping, comprising: means for providing an electrical discharge; means for enclosing the means for providing an electrical discharge” is indefinite. This “means” could all be the same element or could be referring to different elements; therefore, it does not distinctly claim the subject matter of the invention.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claim 1-5, 9-12, 14, 16, 17, 20, 22-30, 36-41, and 53-54 are rejected under 35 U.S.C. 102(b) as being anticipated by Reader 3,554,669.

Reader discloses an electric-fluid energy converter comprising a flow channel 16, 20, a non-conducting insulating layer 24; a first conductive layer or material 12 situated on a first side of the insulating layer; a second conductive layer or material 14 situated on a second side of the insulating layer 24; the first conductive layer or material has a prominent like contour 18; a plurality of openings 16, 20 situated in the first conductive layer 12, the insulating layer 24 and the second conductive layer 14 forming channels having first 18 and second 20 discharge device electrodes; the first and second discharge device electrodes, energized by a voltage, provide an electrical discharge (see col. 3, lines 4-5); and an enclosure 26, 28 containing the channels and having an input port proximate to an input side of the plurality of openings and an output port proximate to an output side of the plurality of openings (see col. 1, lines 20-24). Reader also discloses that the fluid in the enclosure can be transported between the input port and the output port by being forced through the plurality of openings (see col. 1, lines 20-24). Reader further discloses that a flow direction of the flow channel is approximately parallel to the elongated dimension through the non-conducting spacer

material 24, and proceeding from a prominent conductive material 18 to a non-prominent conductive material 22, wherein the conductive materials are electrodes (see col. 2, lines 43-45) forming a discharge device. Reader also discloses that each pumping element of the plurality of pumping elements comprises: a first orifice 16 in a first electrode plate 12; a second orifice 20 in a second electrode plate 14; and a layer of insulating material 24 situated between the first and second electrode plates and having an opening between the first and second orifices (see opening provided by 24 in Figs. 1-2B); and wherein the first orifice has a sharp-like contour (front of 18). Reader further discloses a first portion the plurality of openings situated on the first conductive layer are sharp-like conductor openings 16 and a second portion of the openings are non-sharp-like conductor openings 20, the first discharge electrodes 18 have a configuration to generate in-situ ions proximate to the sharp-like conductor openings; the in-situ ions predominantly have the polarity of the sharp-like conductor openings, which then induce a fluid flow of neutral molecules as a result of a force and viscous drag of the in-situ ions and away from the sharp-like conductor openings. Reader also discloses a plurality of flow channels 16, 20 having the first 12 and second 14 conductive materials; wherein the flow channels form an array in a plane and an axis of each flow channel is approximately perpendicular to the plane (see channel configuration in Figs. 1-2B). Reader further discloses that the first portion of a plurality of channels 16, 20 has the first conductive material 12 on a first side of the plane proximate to the input port and the second conductive material 14 on a second side of the plane proximate to the outlet port (see col. 1, lines 20-24). Reader also discloses

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that the plurality of openings is grouped into first and second stages (see Fig. 3); the stages are arranged in a flow series. Reader further discloses that the openings situated at inputs of the first and second stages are sharp-like conductor openings 34a, 34b; and the openings situated at outputs of the first and second stages are non-sharp-like conductors 40a, 40b; and the first and second stages are in separate chambers (separated by 44c). Reader also discloses that the first orifice 16 of each pumping element is capable of producing an ionizing corona due to the sharpness of the front end of 18 in reference to 22; this creates a higher gradient than elsewhere in the flow channel giving the configuration the potential to provide a corona of ions. Reader further discloses that the sharp-like conductor openings comprise a conductive electrode, thin-film material 12. Reader also discloses that the plurality of openings is fabricated by etching (see col.3, lines 31-34). Reader further discloses that the pump is operated like a valve by adjusting an applied voltage across the first and second discharge device electrodes to oppose and balance an external flow and pressure (see col. 3, lines 4-14).

In reference to claims 16 and 17; while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function, because apparatus claims cover what a device is, not what a device does (*Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990)). Thus, if a prior art structure is capable of performing the intended use as recited in the preamble, or elsewhere in a claim, then it meets the claim, as has been shown above to be the instant case.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reader 3,554,669.

Reader discloses the claimed invention except for the sharp-like conductor openings comprising 10 to 100 nm-thick films and the non-sharp-like openings comprising 100-10,000 nm-thick films of conductive material; and rounded inner diameter edges. It would have been an obvious matter of design choice to make films within these parameters, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955) (see MPEP 2144.04 – IV Changes in Size, Shape, or Sequence of Adding Ingredients).

12. Claims 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reader 3,554,669 in view of Fischer 6,583,407.

Reader discloses the invention as discussed above. However, Reader does not teach the following claimed limitations taught by Fischer.

Fischer teaches a method and apparatus for ion delivery comprising a first electrode 20 and a second electrode 22. Fischer further teaches a method for controlling fluid flow with the at least one set of first and second electrodes to achieve

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pulses of sample analyte into a gas analyzer and/or out of a gas analyzer, the gas analyzer being of gas chromatography (see col. 1, lines 15-25 and col. 9, lines 7-16).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the pump of Reader by moving sample analyte by pulse into a gas analyzer in order to selectively delivery ions that have a wide range of properties (Fischer, col. 1, lines 15-27).

13. Claims 42-46 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reader 3,554,669 in view of Henoch 6,106,236.

Reader teaches a method providing at least one set of first 12 and second 14 electrodes separated by a distance; containing the at least one set of first and second electrodes in an enclosure 26, 28 having an input and an output; the first electrode 18 being shaped so as to be suitable for providing a corona of ionization due to the sharpness of the front end of 18 in reference to 22; this creates a higher gradient than elsewhere in the flow channel giving the configuration the potential to provide a corona of ions; and applying a DC voltage to the at least one set of first and second electrodes which could result in a corona at the first electrode; and wherein the corona may generate ions to induce a fluid flow in the enclosure (see col. 2, lines 65-72 and col. 3, lines 1-3). Reader further teaches a method comprising completing the at least one set of first 32a and second 40a electrodes to ignite the discharge with a second set of electrodes 32b, 40b that could generate an ion drift. Reader also teaches a method wherein a negative electrode attracts mostly positive and heavy ions, a positive electrode attracts mostly negative ions, generated by an attachment of electrons which

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is a lower-energy process than a process of removing an electron from a neutral molecule (see col. 2, lines 55-69), and adjusting the voltages to provide valve-like control of the fluid flow (see col. 3, lines 4-14). However, Reader does not teach the following claimed limitations taught by Henoeh.

Henoeh teaches a fluid conduit comprising a first electrode 12 and a second electrode 14. Henoeh further teaches a method for applying and using an AC voltage 16 to generate ions in an electroless operation and a DC field 24 to accelerate the ions of the fluid in the direction of a desired flow (see col. 2, lines 54-66).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the pump of Reader by using an AC voltage as well as a DC voltage in order to reduce flow friction (Henoeh, col. 2, lines 54-66).

14. Claims 47-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reader 3,554,669 in view of Henoeh 6,106,236 and in further view of Fischer 6,583,407.

Reader in view of Henoeh discloses the invention as discussed above. However, Reader in view of Henoeh does not teach the following claimed limitations taught by Fischer.

Fischer teaches a method and apparatus for ion delivery comprising a first electrode 20 and a second electrode 22. Fischer further teaches a method for controlling fluid flow with the at least one set of first and second electrodes to achieve

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pulses of sample analyte into a gas analyzer and/or out of a gas analyzer, the gas analyzer being of gas chromatography (see col. 1, lines 15-25 and col. 9, lines 7-16).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the pump of Reader in view of Henoch by moving sample analyte by pulse into a gas analyzer in order to selectively delivery ions that have a wide range of properties (Fischer, col. 1, lines 15-27).

Allowable Subject Matter

15. Claims 6-8 and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion


16. The prior art made of record is noted in the attached form 892.


17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter J. Bertheaud whose telephone number is (571) 272-3476. The examiner can normally be reached on M-F 9am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


PJB 3/14/07


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